IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE NO. 7 OF 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT - Applicant(s)
Versus
M/S. NIMIT MACHINE TOOLS - Opponent(s)

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Appearance :
MR. SUNEET SHAH, GOVERNMENT PLEADER for Applicant(s).
NONE for Opponent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 02/11/2006

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

The Gujarat Sales Tax Tribunal at Ahmedabad has made reference under Section-69 of the Gujarat Sales Tax

Act, 1969 to this Court for its opinion on the following question:

> *"Whether on the facts and in the circumstances of the case, Gujarat Sales Tax Tribunal was justified in law in allowing the 2nd appeal and setting aside the orders passed by the learned Assistant Commissioner and the learned Sales Tax Officer and holding that sales effected by the opponent to the Superintending Engineer (Panchayat Circle, Rajkot) to the tune of Rs.2,63,681/- against declarations in Form-P are admissible sales against declarations and consequently removing the penalty levied under section 45(6) of the Gujarat Sales Tax Act, 1969?"*

2. It is to be noted that the Superintending Engineer (Panchayat), Roads and Building Department, Rajkot, *vide* letter dated 27th January, 1981, placed orders for as many as 30 water tanks, the same were supplied to the Superintending Engineer, who in his turn, issued a certificate as an authorised Officer of the State Government, clearly stating that `the goods holder of Registration Certificate No.- as per their Bill No.NMT/3 to 12 dated 11th June, 1981 were purchased by the Superintending Engineer on behalf of the State Government for the purpose of official use by the State Government and were not for the purpose of resale or for use in manufacture of any goods for resale'. On such

certificate, the opponent, during the assessment proceedings, submitted to the authority that the rate of tax would be in accordance with Entry No.18 of Notification No.S-49 dated 29th April, 1970 issued under Section-49(2) of the Act, effective from 6th May, 1970.

3. The Assessing Officer and the Appellate Authority did not agree with the submission, imposed tax in accordance with the regular rate and also imposed penalty. The Tribunal, in the Second Appeal, observed that the certificate in itself was complete proof of the purchase by the State Government and as an authorised officer of the Government, had furnished to the selling dealer, a Certificate in Form `P' declaring, *inter alia*, that the goods so sold to the authorised Officer would be used for the purpose of official use by the Government and not for the purpose of resale or for use in manufacture of any goods for resale, the Assessee was entitled to place reliance upon such certificate. It also observed that present was a case where no penalty could be imposed in view of the said certificate.

4. The question referred to us is that whether the Tribunal was justified in holding that the sales effected by the opponent (assessee) to the Superintending Engineer against declarations in Form `P' were admissible sales

against declarations and the Tribunal was also justified in removing the penalty levied under Section-45(6) of the Act. In our opinion, the finding recorded by the Tribunal is a finding of fact. It is not the case of the Revenue that the Tribunal has read something, which is not available on the records, or has not read something which is available on the records. The findings cannot be said to be perverse, the findings are based on due appreciation of evidence, especially, the certificate issued by the authorised officer.

5. In our opinion, the Tribunal was justified in giving respite and relief to the Assessee; the question is answered in the affirmative, in favour of the Assessee and against the Revenue. The Reference is disposed of accordingly.

[***R.S.Garg, J.***]

[***D. H. Waghela, J.***]

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